85TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
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WILLIAM J. McGARRY

MARCH 19, 1958.—Committed to the Committee of the Whole House and ordered to be printed

Mr. DONOHUE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 9775]

The Committee on the Judiciary, to whom was referred the bill (H. R. 9775) for the relief of William J. McGarry, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to relieve William J. McGarry, a retired chief warrant officer, of all liability to repay the United States $1,444.48 representing compensation paid him while he was employed as a boilermaker at the New York Naval Shipyard from May 23, 1956, through August 3, 1956.

STATEMENT

Mr. McGarry is a retired chief warrant officer of the United States Navy. Since he is retired as a chief warrant officer he is considered to hold an office under the United States. Under the act of July 31, 1894 (title 5, U. S. C., sec. 62) a person is prohibited from holding another office under the United States when he holds an office with a compensation of more than $2,500.

The report of the Comptroller General of the United States to this committee on the bill notes that section 2 (a) of the act of August 9, 1955 (title 34, U. S. C., sec. 410 (a)) extended to those persons who on August 9, 1955, were members of the Fleet Reserve and who previously had served under a temporary appointment in a commissioned grade and completed more than 20 years of active service, 10 of which was active commissioned service, the right to be placed on the retired list at the President's discretion, in the highest rank in which they

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served satisfactorily before their transfer to the Fleet Reserve on application under the terms of the law. That report of the General Accounting Office further noted that it had held that persons placed on the retired list in commissioned grades in accordance with the preceding law are to be viewed as having been appointed to those commissioned grades and therefore subject to the prohibitory provisions of the dual employment act of July 31, 1894.

Mr. McGarry was retired April 1, 1956 as a commissioned warrant officer under the provisions of section 2 (a) of the 1955 act with the retired pay of $2,240 per year, and from that day till August 2, 1956 he was employed in a civilian capacity as a boilermaker at the New York Naval Shipyard and was paid compensation in excess of $2,500 per year. The effect of the provisions of law discussed above to his case is that Mr. McGarry is required to refund the civilian compensation he received for his work performed from May 23, 1956 to August 3, 1956. H. R. 9775 was introduced to provide that Mr. McGarry be relieved from this liability.

The report of the General Accounting Office states that while the dual office aspect of the act of August 9, 1955, may not have been clearly indicated by its terms or by the General Accounting Office's prior decisions, and while Mr. McGarry may not have been at fault, it is the policy of that Office not to favor preferential treatment for a single individual. The General Accounting Office therefore does not recommend the bill favorably. However, the committee differs with this view.

The Department of the Navy has stated in its report to this committee that, based on the exceptional aspects of this case, it expresses no opposition to the enactment of the bill. These aspects involve the facts that Mr. McGarry was mistakenly advised that his employment was not in conflict with the Dual Employment Act. This advice by the New York Naval Shipyard Employment Office was rendered upon the mistaken interpretation of the then applicable provisions of the Navy civilian personnel instructions. Mr. McGarry promptly notified the Navy Finance Center of his civilian Federal employment, but it was not until nearly 3 months later that the Navy Finance Center informed the naval shipyard that his employment as a civilian was barred by the Dual Employment Act. It was about that time that the civilian personnel instructions of the Navy were revised so as to indicate that Mr. McGarry's employment was improper. Mr. McGarry was immediately separated at that time. The Navy report further states:

> It is the opinion of the New York Naval Shipyard employment officer that Mr. McGarry acted in good faith and in reliance upon the advice given him by the shipyard personnel officers.

That committee has carefully considered this matter, and has concluded that this case is a proper subject for legislative relief. It is apparent from the foregoing discussion that Mr. McGarry was misled by the advice given him by responsible officials of the New York Naval Shipyard, and it is also clear that the application of the laws discussed above was something which had to be clarified by a revision of the instructions governing the employment of civilians by the Navy. As is observed in the Navy report, Mr. McGarry acted in good faith.

Mr. McGarry was unaware that the effect of his being granted the benefits of the act of August 9, 1955, would be to bar him from continuing to work at the shipyard. Further the money which he has to refund is the money he was paid for work he performed for the United States, and the Government has had the benefit of this work. Under these circumstances the committee has concluded that the claimant is entitled to relief, and accordingly recommends that the bill be considered favorably.

DEPARTMENT OF THE NAVY,
Washington, D. C., February 14, 1958.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: Reference is made to your letter to the Secretary of the Navy dated January 10, 1958, requesting comment on H. R. 9775, a bill for the relief of William J. McGarry.

The purpose of this bill is to relieve the beneficiary of all liability to repay to the United States the sum of $1,444.48 paid to him as salary in 1956 when he was employed as a boilermaker at the New York Naval Shipyard.

Mr. McGarry is a retired chief warrant officer of the United States Navy. As a retired chief warrant officer he is considered to hold an office under the United States. Since he holds an office by reason of his retired status, the salary or annual compensation attached to which is $2,500 or more, he could not hold another office pursuant to section 2 of the act of July 31, 1894.

Mr. McGarry was employed as a boilermaker at the New York Naval Shipyard from May 23, 1956, to August 3, 1956. His employment was in violation of the dual employment statute above, and he is liable to repay to the United States the amount of money received by him as salary.

The Department of the Navy has consistently stated its views that the dual employment statute and the dual compensation statute (sec. 212 of the act of June 30, 1932, as amended, 5 U. S. C. 59a) are arbitrary and inequitable restrictions upon the employment of retired officer personnel. The Department of the Navy would strongly favor the repeal of the restrictions contained in those statutes. Nonetheless, the Department of the Navy has also consistently opposed piecemeal or private relief legislation designed to free an individual beneficiary from the consequences of violating those statutes because such legislation confers special benefits which are denied to other members of the Armed Forces under similar circumstances.

However, there are exceptional aspects to Mr. McGarry's case. The New York Naval Shipyard employment office advised Mr. McGarry that his employment as a boilermaker was not in conflict with the Dual Employment Act. This advice was rendered upon the mistaken interpretation of the then applicable provisions of the Navy civilian personnel instructions. Although Mr. McGarry promptly notified the Navy Finance Center of his civilian Federal employment, it was not until almost 3 months later that the Navy Finance Center informed the naval shipyard his employment as a civilian was precluded by the Dual Employment Act, but that no overpayment of

retired pay was involved. About the same time, the provisions in the Navy civilian personnel instructions, which the shipyard considered controlling were revised and, in the shipyard's opinion, indicated Mr. McGarry's employment was improper. He was immediately separated. On the basis of the foregoing facts, the commander, New York Naval Shipyard recommended that recovery of salary paid Mr. McGarry not be required. It is the opinion of the New York Naval Shipyard employment officer that Mr. McGarry acted in good faith and in reliance upon the advice given him by the shipyard personnel officers.

The Department of the Navy, therefore, expresses no opposition to the enactment of H. R. 9775 based on the exceptional aspects of this particular case.

The Department of the Navy has been advised by the Bureau of the Budget that there is no objection to the submission of this report on H. R. 9775 to the Congress.

For the Secretary of the Navy.

Sincerely yours,

E. C. STEPHAN,
Rear Admiral, United States Navy, Chief of Legislative Liaison.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, January 30, 1958.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: Your letter of January 23, 1958, acknowledged January 24, requests our comments on H. R. 9775 for the relief of William J. McGarry.

This bill would relieve Mr. McGarry, chief warrant officer, United States Navy, retired, of all liability to repay to the United States the sum of $1,444.48, representing compensation paid to him for the period May 23 to August 3, 1956, while employed as boilermaker at the New York Naval Shipyard.

Section 2 (a) of the act of August 9, 1955 (69 Stat. 615, 34 U. S. C. 410 (a)), extended to those persons who on August 9, 1955, were members of the Fleet Reserve or Fleet Marine Corps Reserve, and who previously had served under a temporary appointment in a commissioned grade and had completed more than 20 years of active service, at least 10 years of which was active commissioned service, the right to be placed on the retired list, at the President's discretion, in the highest rank in which they served satisfactorily before their transfer to the Fleet Reserve or Fleet Marine Corps Reserve if application was made within 90 days after August 9, 1955.

We held in decision of May 22, 1956 (35 Comp. Gen. 657), that September 1, 1955, would be regarded for pay purposes as the effective date of retirement in all cases coming under section 2 (a) of the August 9, 1955, act regardless of when administrative action was actually taken to place the members concerned on the retired list. Also, we held that members placed upon the retired list in commissioned grades pursuant to section 2 (a) are to be viewed as having been appointed to such commissioned grades and, consequently, subject to the prohibitory provisions of the Dual Employment Act of July 31, 1894, as amended (5 U. S. C. 62). This act provides that no

person who holds an office the salary or annual compensation attached to which amounts to the sum of $2,500 shall be appointed to or hold any other office to which compensation is attached unless specifically authorized by law, and officers retired for length of service are within the purview of the act. Recognizing, however, that certain of our prior decisions might be viewed as indicating that the 1894 act would not be applicable in the case of members retired under section 2 (a), we held in decision of October 9, 1956 (36 Comp. Gen. 288), that the dual office principles of the decision of May 22, 1956, should be applied from the date of that decision or the date of the action effecting the appointment to a commissioned grade on the retired list, whichever was later, and that dual compensation refunds should be required on that basis. Copies of those decisions are enclosed for your information.

Our records show that Mr. McGarry was retired April 1, 1956, as a commissioned warrant officer under the provisions of section 2 (a) of the 1955 act with retired pay of $2,240 per annum, and that from that date until August 3, 1956, he was employed in a civilian position at the New York Naval Shipyard with compensation in excess of $2,500 per annum. Under the above-cited decisions he is required to refund the civilian compensation received by him for the period from May 23 to August 3, 1956. The purpose of H. R. 9775 is to relieve him of this liability.

While the dual office aspect of the act of August 9, 1955, may not have been clearly indicated by its terms or our prior decisions and Mr. McGarry may not have been at fault, we do not view with favor legislation which grants preferential treatment to a single individual over other individuals similarly situated, and there are other Fleet Reservists in the Navy in like circumstances who either have refunded, or will be required to refund, some or all of the civilian compensation received by them. Hence, we do not recommend that this bill be favorably considered.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, May 22, 1956.

The honorable the SECRETARY OF THE NAVY.

DEAR MR. SECRETARY: Reference is made to letter of January 26, 1956, from the Assistant Secretary of the Navy (Personnel and Reserve Forces) forwarding a letter dated December 8, 1955, from the disbursing officer, Special Payments Division, Navy Finance Center, requesting decision on several questions concerning the retired status and pay of those members of the Fleet Reserve and Fleet Marine Corps Reserve who have been placed on the retired list of the Navy in accordance with the provisions of section 2 (a), act of August 9, 1955, 69 Stat. 615.

Public Law 318, 84th Congress, the act of August 9, 1955, cited above, is as follows:

"That the Act of February 21, 1946 (60 Stat. 26) as amended, is further amended by—

"(a) inserting in section 6 after the word 'thereof' where it first occurs a comma and the phrase 'including any member of the naval service temporarily appointed to commissioned grade whose permanent status is enlisted,';

"(b) adding at the end of section 6 the following new sentence: 'As used in this section "active commissioned service" includes all active service performed under a temporary appointment to a commissioned grade, including a commissioned warrant grade, by an officer whose permanent status is enlisted.'; and

"(c) deleting section 7 (c).

"SEC. 2. (a) Any person who, on the date of enactment of this Act, is a member of the Fleet Reserve or Fleet Marine Corps Reserve and who prior to his transfer thereto—

"(1) was serving under a temporary appointment in a commissioned grade, and

"(2) had completed more than twenty years of active service in the Navy, Marine Corps, Army, Air Force, or Coast Guard, or the reserve components thereof, including active duty for training, at least ten years of which was active commissioned service, may, in the discretion of the President, be placed on the retired list with the highest rank in which he served satisfactorily before his transfer to the Fleet Reserve or Fleet Marine Corps Reserve, if application therefor is made within ninety days after the enactment of this Act.

"(b) Any person transferred to the retired list under subsection (a) is entitled to retired pay at the rate of 2½ per centum of the active duty pay, with longevity credit, of the grade in which he is placed on the retired list, multiplied by the number of years of service for which entitled to credit in the computation of his active duty pay at the time of transfer to the Fleet Reserve or Fleet Marine Corps Reserve, not to exceed a total of 75 per centum of the active duty pay of that rank. A fractional year of six months or more shall be considered a full year in computing the number of years of service by which the rate of 2½ per centum is multiplied."

It is stated that notices as to the eligibility requirements, etc., for retirement under section 2 (a) were mailed on or about August 18, 1955, to all Fleet Reservists entitled to retainer pay on August 9, 1955, and that a number of applications were received for retirement under the provisions of that section. It was necessary, in order to properly process these applications, to review each case individually with respect to the computation of creditable service and also with respect to the fitness reports to make a determination concerning satisfactory service in a given rank prior to transmittal of such applications to the Secretary of the Navy for his approval action. In illustration, it is pointed out that the application of Lt. (jg.) Forrest Robinson, United States Navy (retired), was dated August 15, 1955, but was not approved until October 26, 1955, due to administrative delays inherent to the processing procedures.

In our decision dated July 22, 1952 (32 Comp. Gen. 38) we held (quoting the syllabus) that "A temporarily appointed commissioned officer of the Regular Navy who retains his permanent enlisted status and who completes at least 10 years of active commissioned service is not to be regarded as 'an officer of the Regular Navy' within the purview of section 6 of the act of February 21, 1946, so as to be entitled thereunder to retirement after 20 years of active service."

The effect of that decision was to limit temporary officer personnel with permanent enlisted status in the Navy to the benefits prescribed in the provisions of law applicable to their permanent enlisted status only, i. e., transfer in their enlisted status to the Fleet Reserve or Fleet Marine Corps Reserve with subsequent further transfer to the retired list of the Navy or Marine Corps, upon the completion of 30 years' service, including time in the Fleet Reserve or Fleet Marine Corps Reserve (34 U. S. C. 854–854g), plus advancement on the retired list to their officer rank if otherwise eligible for such advancement under other provisions of law. The exclusion of temporary officer personnel with permanent enlisted status in the Navy from the privilege of retiring in their officer status, i. e., as "officers," after 20 years' service was considered to be inequitable and led to the enactment of Public Law 318 to overcome the holding in the decision of July 22, 1952.

Public Law 318 was enacted and became effective on August 9, 1955. Under the provisions of section 1 of that act, temporary officers of the naval service with permanent enlisted status who meet the prescribed requirements have been entitled since that date to voluntary retirement under section 6 of the act of February 21, 1946, 60 Stat. 27, as amended (34 U. S. C. 410b). Section 2 (a) of Public Law 318 extends to those persons who, on August 9, 1955, were members of the Fleet Reserve or Fleet Marine Corps Reserve, and who, prior thereto, had served under a temporary appointment in a commissioned grade and had completed more than 20 years of active service, at least 10 years of which was active commissioned service, the qualified right to be placed on the retired list, at the President's discretion, in the highest rank in which they served satisfactorily before their transfer to the Fleet Reserve or Fleet Marine Corps Reserve "if application therefor is made within 90 days" after August 9, 1955. Thus, those persons who, on August 9, 1955, were members of the Fleet Reserve or the Fleet Marine Corps Reserve and who on that date met the conditions specified in section 2 (a) of Public Law 318, are accorded voluntary retirement privileges which correspond with those granted in section 1 of the act, effective from and after August 9, 1955, to temporary officer personnel with permanent enlisted status in the Navy.

The several questions submitted by the disbursing officer are as follows:

"(*a*) Whether retired pay under section 2 (b) of the act of August 9, 1955, may be credited (1) from date of enactment of Public Law 318, (2) from August 15, 1955, date of application, (3) from September 1, 1955, first day of month following date of application, or (4) from October 26, 1955, date of approval.

"(*b*) Where member was transferred to the Fleet Reserve and served on active duty subsequent to transfer, may such active duty subsequent to transfer be credited in determining (1) longevity credit of the rank in which retired and (2) years of service credited for percentage multiple purposes in computing retired pay.

"(*c*) If retirement of the Fleet Reservists is effected under the act of August 9, 1955, while serving on active duty, is he entitled upon release to inactive duty to credit for active service performed prior and/or subsequent to retirement in determining longevity credit of rank in which retired and in computing service for percentage multiple purposes in computing retired pay under section 516 of the Career Compensation Act of 1949.

"(*d*) Whether members retired under section 2(a) of the act of August 9, 1955 are subject to the dual employment provisions of the act of July 31, 1894, as amended (5 U. S. C. 62)."

It would appear that the Congress intended that all qualified members of the Fleet Reserve and the Fleet Marine Corps Reserve making application for retirement under section 2(a) of the 1955 act within the 90-day period specified in that section should, if granted such retirement, be treated alike with respect to the effective date of retirement. Accordingly, while the language of the statute is not clear on that point, it is our view that all qualified members of the Fleet Reserve and Fleet Marine Corps Reserve who made application within the 90-day period specified in the law, are entitled to and should receive the voluntary retirement pay benefits provided in section 2(a) on an equal basis. Therefore, all such qualified members who have been placed on the retired list in the discretion of the President, pursuant to the authority of section 2(a), may be considered as having become entitled to retirement effective August 9, 1955, subject, however, to the Uniform Retirement Date Act of April 23, 1930 (46 Stat. 253, 5 U. S. C. 47a), which provides that every Federal retirement "shall take effect on the 1st day of the month following the month in which said retirement would otherwise be effective." On that basis, September 1, 1955, will be regarded for pay purposes as the effective date of retirement in all such cases. Question (a) is answered accordingly.

Section 2 (b) of Public Law 318 prescribes the basis for computing the retired pay of members of the Fleet Reserve and Fleet Marine Corps Reserve transferred to the retired list of the Navy, under the authority of section 2 (a) of that act, in the highest rank in which they satisfactorily served. An individual so transferred is entitled to retired pay at the rate of 2½ percent of the active-duty pay, with longevity credit, of the grade in which he is placed on the retired list, multiplied by the number of years of service for which entitled to credit in the computation of his active-duty pay at the time of his transfer to the Fleet Reserve or Fleet Marine Corps Reserve, not to exceed a total of 75 percent of the active-duty pay of that rank. Since, as held in reply to question (*a*) above, September 1, 1955, is to be regarded for pay purposes as the effective date of retirement of all qualified members transferred to the retired list of the Navy pursuant to the provisions of section 2 (a), such a member is entitled to have his retired pay computed, effective September 1, 1955, on the basis of the active-duty pay of the grade in which placed on the retired list, with credit for all service which he was entitled to count for active-duty pay purposes at that time. However, the number of years of service creditable in determining the percentage multiple to be used in computing his retired pay is fixed by section 2 (b) as the number of years of service for which entitled to credit in the computation of his active-duty pay at the time of his transfer to the Fleet Reserve or Fleet Marine Corps Reserve. Accordingly, question (b–1) is answered in the affirmative and question (b–2) is answered in the negative.

Section 516 of the Career Compensation Act of 1949 (63 Stat. 832, 37 U. S. C. 316) in pertinent part expressly provides that the retired pay of an individual, whose status brings him within the scope of those statutory provisions, "shall * * * upon his release from active

duty * * * be computed by multiplying the years of service creditable to him for purposes of computing retired pay * * * at the time of his retirement * * * plus the number of years of subsequent active duty performed by him by 2½ per centum, and by multiplying the product thus obtained by the base and longevity pay or the basic pay, as the case may be, of the rank or grade in which he would be eligible, at the time of his release from active duty, to be retired * * * except for the fact that he is already a retired person." Qualified members of the Fleet Reserve and Fleet Marine Corps Reserve serving on active duty when transferred to the retired list effective September 1, 1955 (see answer to question (a) above), under authority of section 2 (a) of Public Law 318, would be entitled, if immediately placed on inactive duty, to have their retired pay computed as of that date on the basis set forth in the answers to questions (b–1) and (b–2) above. Such members would be further entitled, by virtue of section 516 of the Career Compensation Act of 1949, to an increase in retired pay for any period of active duty performed by them after September 1, 1955, the effective date of their retirement. In other words, members of the Fleet Reserve and Fleet Marine Corps Reserve who were transferred to the retired list of the Navy effective as of September 1, 1955, under authority of section 2 (a) of Public Law 318, while serving on active duty, are entitled under section 516, Career Compensation Act of 1949, to include, when subsequently released from active duty, all active duty performed by them on and after September 1, 1955, in determining the basic pay to be used in the computation of their retired pay. Likewise, all active duty performed on and after September 1, 1955, the effective date of retirement in such cases, may be credited in computing the number of years of service for the percentage multiple purposes of section 516. Question (c) is answered accordingly.

In question (d) inquiry is presented whether those members of the Fleet Reserve and the Fleet Marine Corps Reserve who are retired under authority of section 2 (a) of Public Law 318 are subject to the dual employment provisions of the act of July 31, 1894, 28 Stat. 205, as amended, which are as follows (quoting from 5 U. S. C. 62):

"No person who holds an office the salary or annual compensation attached to which amounts to the sum of two thousand five hundred dollars shall be appointed to or hold any other office to which compensation is attached unless specifically authorized thereto by law; but this shall not apply to retired officers of the Army, Navy, Air Force, Marine Corps, or Coast Guard whenever they may be elected to public office or whenever the President shall appoint them to office by and with the advice and consent of the Senate. Retired enlisted ment of the Army, Navy, Air Force, Marine Corps, or Coast Guard retired for any cause, and retired officers of the Army, Navy, Air Force, Marine Corps, or Coast Guard who have been retired for injuries received in battle or for injuries or incapacity incurred in line of duty shall not, within the meaning of this section, be construed to hold or to have held an office during such retirement."

The prohibition contained in the first sentence of the above-quoted statutory provisions is directed against the appointment to "any other office" to which compensation is attached of a person who holds "an office" the salary or annual compensation attached to which amounts to $2,500. However, retired enlisted men of the Army, Navy, Air

Force, Marine Corps, or Coast Guard, retired for any cause, and retired officers of the Army, Navy, Air Force, Marine Corps, or Coast Guard who have been retired for injuries received in battle or for injuries or incapacity incurred in line of duty are exempted from such inhibition by virtue of the second sentence as added by the amending act of May 31, 1924 (43 Stat. 245).

Section 2 (a) of Public Law 318 expressly provides that any member of the Fleet Reserve or Fleet Marine Corps Reserve who qualified and made application within 90 days, etc., for the benefits therein prescribed may, in the discretion of the President, be placed on the retired list "with the highest rank in which he served satisfactorily before his transfer to the Fleet Reserve or Fleet Marine Corps Reserve." The legislative history of Public Law 318, definitely establishes that the basic purpose of section 2 (a) was to permit "these individuals to be retired as officers in their highest grade satisfactorily served." (See p. 3, H. Rept. No. 869, 84th Cong., 1st sess., on the bill H. R. 2112, which became Public Law 318). Thus, under the specific terms of section 2 (a), all individuals transferred to the retired list of the Navy pursuant thereto have been placed on the retired list, as a result of discretionary action taken by the President, in the officer rank corresponding to the highest temporary officer rank in which they had served satisfactorily before they were transferred to the Fleet Reserve or Fleet Marine Corps Reserve. It would seem therefore, that the President's action to effect retirement under section 2 (a) in a particular case should be viewed as tantamount to the "appointment" of the person concerned as an "officer" on the retired list and that members so transferred to the retired list of the Navy should not be viewed as "Retired enlisted men of the * * * Navy" within the meaning of the exemption in the 1894 statute to the prohibitory provisions of that statute. Hence, it is our view that members so transferred should be considered as subject to such prohibitory provisions, assuming that they are not within the specific exemption pertaining to officers retired for injuries received in battle or for injuries or incapacity incurred in line of duty. Question (d) is answered accordingly.

A further question is presented in the Assistant Secretary's letter of January 26, 1956, as to whether members retired pursuant to the provisions of section 6 of the act of February 21, 1946 (60 Stat. 27), as amended by section 1 of Public Law 318, are likewise subject to the dual employment provisions of the 1894 law (5 U. S. C. 62).

Section 6, act of February 21, 1946, as amended by the acts of August 4, 1955 (69 Stat. 493) and August 9, 1955 (69 Stat. 614) provides as follows (quoting 34 U. S. C. A. 410b):

"When any officer of the Regular Navy or the Regular Marine Corps or the Reserve components thereof, including any member of the naval service temporarily appointed to commissioned grade whose permanent status is enlisted, has completed more than twenty years of active service in the Navy, Marine Corps, Army, Air Force, or Coast Guard, or the Reserve Components thereof, including active duty for training, at least ten years of which shall have been active commissioned service, he may at any time thereafter, upon his own application, in the discretion of the President, be placed upon the retired list on the first day of such month as the President may designate. As used in this section 'active commissioned service' includes all active

service performed under a temporary appointment to a commissioned grade, including a commissioned warrant grade, by an officer whose permanent status is enlisted."

In view of the above quoted statutory provisions the voluntary retirement of an officer of the Navy, including any member of the naval service temporarily appointed to commissioned grade whose permanent status is enlisted, is accomplished in the discretion of the President, in the individual's "officer" status. Accordingly, what we have stated in answer to question (d), above, has equal application to all members of the naval service who are retired as "officers" under the authority of section 6, act of February 21, 1946, as amended.

Sincerely yours,

FRANK H. WEITZEL,
Assistant Comptroller General of the United States.

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